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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/202,758	12/21/1998	GARY ANTHONY JUBB	M8540/185343	3326

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EXAMINER

GROUP, KARL E

ART UNIT

PAPER NUMBER

1755

DATE MAILED: 02/26/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

MF-13

<b>Advisory Action</b>	Application No. <b>09/202,758</b>	Applicant(s) <b>Jubb et al</b>
	Examiner <b>Karl Group</b>	Art Unit <b>1755</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED \_\_\_\_\_ FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on Oct 3, 2001. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search. (See NOTE below);
  - (b)  they raise the issue of new matter. (See NOTE below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4.  Applicant's reply has overcome the following rejection(s):  
\_\_\_\_\_  
\_\_\_\_\_
5.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).
6.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attachment.  
\_\_\_\_\_
7.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8.  For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):  
Claim(s) allowed: none  
Claim(s) objected to: none  
Claim(s) rejected: 8-15  
\_\_\_\_\_
9.  The proposed drawing correction filed on \_\_\_\_\_ a)  has b)  has not been approved by the Examiner.
10.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
11.  Other:

  
KARL GROUP  
PRIMARY EXAMINER  
ART UNIT 1755

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1. An appeal under 37 CFR 1.191 was filed in this application on 10-3-01. Appellant's brief is due in accordance with 37 CFR 1.192(a).
2. The amendment filed 2-1-2002 under 37 CFR 1.116 in reply to the final rejection has been entered, but is not deemed to place the application in condition for allowance. For purposes of appeal, the status of the claims is as follows:

**Allowed claim(s): none**

**Rejected claim(s): 8-15**

**Claim(s) objected to: none**

3. Applicants should note:
  - a. The Abstract has been entered.
  - b. The mere inclusion of a component is not considered to be an active process step since it fails to clearly define how the component is included. Process steps require an active step such as adding, forming, melting.
  - c. Applicants argument that  $P_2O_5$  is not required in claim 8 is not persuasive. Claim 8 sets forth "including in the fiber composition a  $P_2O_5$  former in an amount..." which would require  $P_2O_5$  to be present (emphasis on amount). Applicants are requested to point out in the claim where the  $P_2O_5$  is listed as optional. The  $B_2O_3$  is optional. If the  $P_2O_5$  is present in an amount it cannot be within a range including zero as set forth in claim 10. If the  $P_2O_5$  and  $B_2O_3$  may both be zero than the only process step in claim 8 is including zero% of a component.

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d. The prior art references all teach glass fibers that have compositions that fall squarely within the ranges set forth in the claims therefore all art rejections are maintained. The intended use of the claimed composition does not patentably distinguish the composition, *per se*, since such undisclosed use is inherent in the reference composition. In order to be limiting, the intended use must create a structural difference between the claimed composition and the prior art composition.

e. The rejection over Jubb is maintained because it is not clear that  $P_2O_5$  and/or  $B_2O_3$  is required. Both these components include zero amounts in the rejected claims.

f. Example 235 of Olds et al falls within the claimed ranges.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl Group whose telephone number is (703)308-3821. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached on (703)308-3823. The fax phone number for this Group is (703)872-9310, for any non-final amendment or communication, and (703)872-9311 for any after-final amendment or communication.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)308-0661.

  
**KARL GROUP**  
**PRIMARY EXAMINER**  
**ART UNIT 1755**

Keg  
February 25, 2002